

## Confidential Briefing Paper

**Date:** 21 January 2014

**Time:** 10:34

**File No:** 2011064

**Matter:** CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS TRUST BOARD IN SOLOMON ISLANDS INCORPORATED

PURCHASE FROM XJ6 LIMITED – CRABTREE PROPERTY SOLOMON ISLANDS

FIXED TERM ESTATE IN PAECEL NUMBERS 191-034-78 AND 191-034-165

### Preliminary

In 2011, the Church contracted with X J 6 Limited to purchase the “Crabtree” property Honiara described as the fixed term estate (“FTE”) in parcel numbers (“PN’s”) 191-034-78 and 191-034-165 (“PN’s 78 and 165”) (both highlighted in green on the attached position summary/block plan) (“the Position Summary”). Prior to settlement, it was discovered that parts of the block boundary walls of the property encroached:

- northwest on to PN 99
- north onto the public road
- east on to a public right of way and thence on to PN 173 (apparently owned by Solomon Airlines Limited (“Airlines”).

Land lying to the east of the block wall was also being used as a public right of way accessing residences lying to the rear of PN’s 165 and 173.

Apart from the encroaching block walls themselves, the encroachments to the north and northwest were not significant. The encroachment to the east is of sufficient area as to concern the Church.

### Settlement & Retention

The Church nevertheless settled its purchase of PN’s 165 and 78 in December 2011 subject to the following conditions:

- XJ 6 rectifies the encroachments at its own cost within 12 months by ensuring that the boundaries to PN 78 are re-aligned so as to register all encroaching land and improvements in the name of the Church.
- Pending that registration, the Church retains SBD500,000.00 of the purchase price, to be invested through Sol-Law Trust Account in the joint names of the parties.
- If the encroachments are not remedied within 12 months of the date of settlement, the retention and accrued interest are forfeited to the Church whereupon the Church becomes responsible for rectification of the encroachments at its cost.

**Action Post Settlement**

XJ 6 has applied to the Commissioner of Lands to rectify the encroachments by creation of the following parcels to be registered in the Church's name:

- northwest encroachment (highlighted blue on the Position Summary) – new PN 177

**STATUS** – Created and now registered in the name of the Church.

- north onto the public road and east onto the public right of way (highlighted pink on the Position Summary) – new PN 176

**STATUS** – Created and now registered in the name of the Church.

- east on to PN 173 (highlighted light orange on the Position Summary) – new PN 174

**STATUS** – Created but **NOT registered** in the name of the Church for the reason that Airlines, although not averse to ceding the land, refuses to deliver up the land without compensation. Airlines is not obliged to consent.

On instructions, SBD100,000.00 of retention was released to XJ 6 in May 2013. SBD400,000.00 plus accrued interest remains on investment on automatic rollover pending registration of PN 175 in the name of the Church.

While the PN 175 and the adjacent new PN 174 (highlighted purple on the Position Summary) are required to cure the final encroachment (which does interest the Church) and secure the right of way (which is of no direct concern to the Church), we have no information to suggest that XJ 6 is actively pursuing registration of PN 175. It appears to be all too hard. While the Church (via this office) can continue to urge the Commissioner and XJ 6 to resolve the matter, there is little more that the Church can do as it is not the proprietor of PN 173 and has no agreement with Airlines as to a remedy.

Our Mr. Soma reports that his recent visits to the Commissioner's office have been unsuccessful. There was literally no one there. According to Mr. Soma, it was like a "ghost office". We put that down to officers not having returned from Christmas leave. Nevertheless, it is unacceptable and frustrating to all parties in the extreme.

Mr. Soma has ascertained from XJ 6 that XJ 6 paid SBD17,000.00 to Airlines as "compensation" for the grant of PN 175 to the Church. We have been unable to verify the truth or otherwise of that statement or the source of the funds paid by XJ 6. The Church has mentioned the payment of SBD25,000.00 to some party. This may be the SBD17,000.00 to which XJ6 refers.

Notwithstanding payment, Airlines has still not consented to the grant of PN 175. Apparently all but two directors of Airlines' board are prepared to give Airlines' consent. One of the directors is a local lawyer who is known to us. We will not approach him until the Church has determined how it wishes to advance the matter.

**Alternatives Going Forward**

There must be timely finality, within legal and commercial parameters. The alternatives to that end are:



1. Wait for the Commissioner and/or XJ 6 to resolve the matter amicably with Airlines – unlikely because of apathy and lack of funds. In any event, some funds have already been paid to Airlines for PN 175 without success. In the meantime, the Church continues to incur costs without benefit and cannot fully exploit PN's 78 and 165 in the interim. Not recommended.
2. If there is a formal compensation agreement between Airlines and XJ 6 and/or the Commissioner (yet to be ascertained), encourage Airlines and XJ 6 to enforce that agreement. Not recommended due to the time needed for enforcement and also for the reasons in 1.
3. Seek a compulsory acquisition of PN's 175 and 174 by the Commissioner. Compulsory acquisition requires payment of compensation and will take time. While the Commissioner has exercised contractual rights to recover land required for a public purpose, we have no knowledge of any compulsory acquisition/resumption in recent times. The political will is just not there. It is also doubtful whether an acquisition intended to cure an encroachment by a private citizen is a public purpose *intra vires* the Commissioner. We have not examined the point in detail at this time.

For these reasons and the reasons in 1, compulsory acquisition is unlikely. Not recommended as a first option.

4. Church accepts that it will never acquire PN 175, forfeits and recovers the remaining retention and relocates the block wall from PN 175 to PN 176 along the PN 175/176 boundary. This is a costly solution and results in land lost. Notwithstanding the recovered retention, money is never adequate compensation for land lost. Not recommended.
5. Church, XJ6 and Commissioner negotiate settlement with Airlines and
  - Church's costs and any compensation/additional compensation payable to Airlines is paid from retention.
  - Balance retention and accrued interest is released to XJ6 upon registration of PN 175 in the name of the Church.

As to the negotiations, the Church (via Sol-Law ?) will need to take the lead as the Commissioner and XJ 6 appear incapable of doing either.

This alternative is only possible if

- XJ 6 agrees to the arrangement and
  - A commercial settlement can be reached with Airlines.
6. Same as in 5 save that the Church retains any surplus retention and accrued interest after settlement with Airlines. Thus the Church may recover some of the money it has outlaid on the entire project. A surplus is not guaranteed as quantum of surplus depends on the agreement with Airlines. We have previously advised the Church on forfeiture and recovery of the retention. The Church has declined to forfeit and recover to date.

Alternative 5 is recommended as the more commercial resolution with the best likelihood of success in the short term. This is a more likely alternative now than it was 12 months ago. Alternative 5 keeps XJ 6 on side - there is every reason for XJ6 to agitate for prompt resolution (and not derail matters within the Commissioner's office) if XJ6 can sniff the prospect of some money at the end of the exercise. As matters stand, XJ 6 comes away with nothing if it adopts an unreasonable stance as the Church will pursue alternative 6 as a fallback.

In the case of both 5 or 6, the land to be released by Airlines must be valued on a per square metre basis. Subject to instructions, a premium may be added to sweeten the pot for Airlines. XJ6/the Church may be asked to cover any compensation which the Commissioner might be called on to pay for the public right of way (PN 174). While that has nothing to do with the Church, it may be expedient to pay something (out of the retention) simply to settle the matter. XJ 6 would need to agree to that. There is no reason for XJ6 to oppose since it stands to gain nothing if the Church elects alternative 5.

In descending order of preference, Alternative 3 is the next best fallback if Airlines proves difficult. Airlines can be informed that the Church, while unhappy, is nevertheless more than willing to move its fence back to the PN to the PN 175/176 boundary – the Church is comfortable with the security it holds to cover that cost and the value of the small area of land represented by PN 175 which will be lost. In that event: -

- XJ 6 loses the balance retention and accrued interest;
- Airlines receives nothing from either the Church or the Commissioner;
- the public right of way represented by PN 174 is still required by the Commissioner and can still be resumed by him for that public purpose exercising contractual rights under the Deed of Grant for PN 173;
- any compensation paid by the Commissioner will likely be significantly less than what the Church/XJ 6 will offer Airlines.

Thus, from a commercial point of view, a commercial settlement under alternative 5 is also in Airlines' best interests.

Please consider this paper and instruct us as to how the Church wishes to proceed. If the Church elects alternative 5, Mr. Soma will sound out XJ 6 officers for their attitude.

**SOL-LAW**



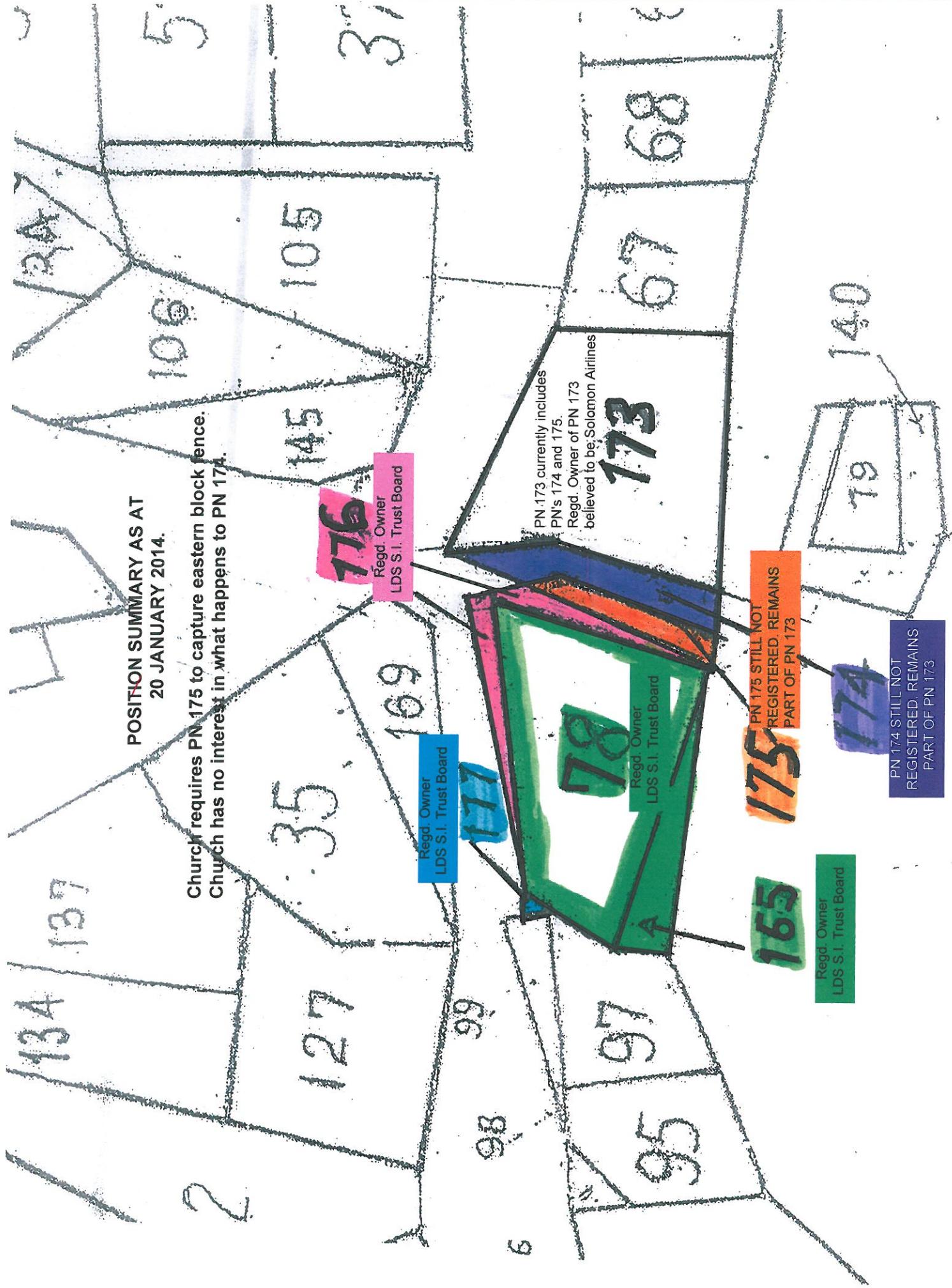
**John Katahanas**

LL.B. (Hons.), MQSN (Partner)



POSITION SUMMARY AS AT  
20 JANUARY 2014.

Church requires PN 175 to capture eastern block fence.  
Church has no interest in what happens to PN 174.



Regd. Owner  
LDS S.I. Trust Board

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LDS S.I. Trust Board

Regd. Owner  
LDS S.I. Trust Board

Regd. Owner  
LDS S.I. Trust Board

PN 175 STILL NOT  
REGISTERED. REMAINS  
PART OF PN 173

PN 174 STILL NOT  
REGISTERED. REMAINS  
PART OF PN 173

PN 173 currently includes  
PN's 174 and 175.  
Regd. Owner of PN 173  
believed to be Solomon Airlines